

**SURVEY OF RECENT DECISIONS**  
**OF**  
**THE HONORABLE PAUL J. KILBURG**

**U.S. Bankruptcy Court  
Northern District of Iowa**

**October 21, 2004 – October 15, 2005**

**Prepared by**

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The case summaries are categorized to correlate with the Key Number Classification of West's Bankruptcy Digest. West's key numbers are included in the topic headings below. Summaries of prior decisions (April 23, 1993 to present) are available on our web site, [www.ianb.uscourts.gov](http://www.ianb.uscourts.gov).

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## **I. IN GENERAL, 2001-2120**

### **C. Jurisdiction, 2041-2080**

Schnittjer v. Pioneer Mutual Life Ins. Co.

Rule 7024

(In re Vernon Cooper; In re Connie Cooper)

No. 02-03466, 03-00235; Adv. 05-9025, 2005 WL 1995440,  
Ch. 7, August 16, 2005

Trustee's complaint seeks recovery against Pioneer for breach of contract to pay commissions to Debtor as Pioneer's agent. Debtor's corporation, Vern Cooper & Assoc., Inc. ("VCA") seeks to intervene, claiming an interest in the commissions that are the subject matter of the complaint. Pioneer objects that VCA's motion fails to comply with Rule 24 and the Court lacks subject matter jurisdiction over the Intervention Complaint. HELD: The Court has "related to" jurisdiction over VCA's intervention complaint. Intervention will not delay or prejudice the parties in this case. Permissive intervention is appropriate in these circumstances.

## **II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200**

### **C. Costs and Fees, 2181-2200**

FL Receivables Trust 2002-A v. Gilbertson Restaurants, LLC, et al

11 U.S.C. § 105(a)

(In re Gilbertson Restaurants, LLC et al)

28 U.S.C. § 1927

No. 04-00385 et al, Adv. 04-9061, 2005 WL 994023,  
Ch. 11, April 26, 2005

Rule 9011

Burger King Corp. moves for sanctions against FL Trust for improperly naming Burger King as a defendant in this adversary proceeding. FL Trust argues the motion is procedurally defective and substantively not supported by the law or facts. HELD: The Court has the authority and discretion to impose sanctions against counsel, a party or both. Considering the interests of all parties, the Court concludes, in its discretion, that sanctions should not be imposed. The Court encourages the parties to carefully evaluate the legitimacy and purpose of their conduct, attempt to communicate more appropriately with each other, and operate in such a manner that the principles and objectives of Chapter 11 of the Bankruptcy Code are furthered.

## **III. THE CASE, 2201-2360**

### **C. Voluntary Cases, 2251-2280**

In re Andrew H. Schrodemier

11 U.S.C. § 707(b)

No. 04-04426, 2005 WL 783066, Ch. 7, April 4, 2005

U.S. Trustee seeks dismissal of Debtor's case for substantial abuse, arguing Debtor's scheduled expenses are unreasonable. HELD: By reducing expenses, Debtor could make monthly payments of between \$500 and \$600 toward his unsecured debt. Granting Debtor Chapter 7 relief would be a substantial abuse of the Bankruptcy Code.

In re Rick & Ann McCahen

11 U.S.C. § 707(b)

No. 04-03475, 2005 WL 579687, Ch. 7, Feb. 2, 2005

U.S. Trustee seeks dismissal for substantial abuse. Debtors assert anticipated expenses will have an adverse effect on disposable income. HELD: Debtors have sufficient income to fund a Chapter 13 plan. If Debtors do not choose to convert to Chapter 13, the case will be dismissed.

In re Darren & Lisa Franzenberg

11 U.S.C. § 707(b)

No. 04-03282, 2004 WL 3235824, Ch. 7, Dec. 30, 2004

U.S. Trustee seeks dismissal for substantial abuse. HELD: Debtors have sufficient disposable income to fund a Chapter 13 plan. If Debtors do not choose to convert to Chapter 13, the case will be dismissed.

#### **IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490**

##### **C. Relief from Stay, 2421-2460**

In re Chris & Beth Cullen

11 U.S.C. § 362

No. 05-01508, 329 B.R. 52, Ch. 7, August 16, 2005

Creditor-credit union filed motion to lift stay in order to effect a setoff of its claim against two savings accounts held in joint tenancy by Chapter 7 debtor and his nondebtor father. Debtors filed motion for sanctions, asserting that creditor's postpetition freeze of the accounts violated the automatic stay. HELD: The creditor violated the automatic stay by placing an indefinite hold on the accounts. It had no right to set off debtors' debts from the accounts held jointly by debtor and his father. The Court awarded \$1,000 in actual damages and \$5,000 in punitive damages for the creditor's willful stay violation.

In re Carroll's Wine Co.

11 U.S.C. § 362(d)

No. 05-00961, Ch. 11, July 20, 2005

Lessors under Debtor's commercial lease seek relief from stay to enforce their rights under the lease and pursue related state court litigation. HELD: Movants have a final judgment in Iowa District Court, subject to motions for reconsideration and appeal rights. It is not appropriate for this Court to revisit issues which could have the effect of undermining the judgment of the Dubuque County Court. The automatic stay is lifted to allow movants to proceed with matters in state court.

In re Paul Kramer  
No. 04-02900, 2004 WL 3019466, Ch. 7, Dec. 7, 2004

11 U.S.C. § 362(d)(1)

The United States seeks retroactive relief from the automatic stay to rehabilitate a judgment entered postpetition in U.S. District Court. HELD: Issues of notice of the case to the United States are problematic. However, it may have had actual or constructive notice of the case. Annulment of the stay should only be granted in extraordinary circumstances, which are not present in this case.

#### **D. Enforcement of Injunction or Stay, 2461-2480**

In re Ragan C. Craig  
No. 04-03870, 325 B.R. 804, Ch. 7, May 26, 2005

11 U.S.C. § 524(a)(2)

Debtor moves to recover for credit card company's alleged violations of discharge injunction, in sending collection letters to debtor's spouse, requesting that she pay debtor's discharged debt on his individual credit card account. HELD: Creditor's collection letters, being directed at spouse rather than at debtor, did not violate discharge injunction.

In re Jason and Shawna Mehaffy  
No. 04-04762, 2005 WL 831805, Ch. 7, April 11, 2005

11 U.S.C. § 362(b)(11)

Debtors seek to recover damages for alleged violations of the automatic stay involving Mister Money's presentment of a check Debtor signed and delivered to Mister Money prepetition. HELD: Mister Money received appropriate notice of the bankruptcy case. Its actions in presenting the check for payment postpetition are excepted from the automatic stay. However, cashing the check constituted a voidable postpetition transfer. Debtors are entitled to reimbursement of the amount of the transfer.

In re Paul Kramer  
No. 04-02900, 2005 WL 579696, Ch. 7, Feb. 23, 2005

11 U.S.C. § 362(h)

Debtor pro se asserts Creditor and its attorney violated the automatic stay by contacting Debtor and instituting a state court action postpetition. HELD: Creditor had notice of Debtor's bankruptcy case. Its attorneys did not have actual or constructive notice. Creditor willfully violated the automatic stay. Damages of \$500 awarded to Debtor.

In re Thomas Wolfe  
No. 04-04323, 2005 WL 579690, Ch. 7, Feb. 2, 2005

11 U.S.C. § 362(h)

Payday loan creditor, with knowledge of the bankruptcy case, attempted to cash a check it was holding for Debtor postpetition. HELD: Creditor received notice of Debtor's case. Its attempt to cash the check postpetition violated the automatic stay. Damages of \$250 plus attorney fees of \$300 awarded to Debtor.

In re Donald & Jody Merfeld

11 U.S.C. § 362(h)

No. 04-03162, 2005 WL 579731, Ch. 7, Feb. 2, 2005

Creditor sent Debtors a collection letter after receiving notice of the case from their attorney. Debtors request damages for violation of the automatic stay. HELD: Creditor violated the automatic stay. Damages of \$250 plus attorney fees of \$300 awarded to Debtors.

In re Paul Kramer

11 U.S.C. § 362(b)(9)

No. 04-02900, 2004 WL 3235823, Ch. 7, Dec. 16, 2004

Debtor pro se asserts Jones County Treasurer violated the automatic stay by mailing a tax bill postpetition. HELD: The County Treasurer did not violate the automatic stay. This type of communication is excepted from the automatic stay.

In re Paul Kramer

11 U.S.C. § 362(b)(9)

No. 04-02900, 2004 WL 3235815, Ch. 7, Dec. 16, 2004

Debtor pro se asserts Iowa Department of Revenue violated the automatic stay by sending a letter stating tax liability and a Notice of Assessment. HELD: The Department of Revenue did not violate the automatic stay. This type of communication is excepted from the automatic stay.

In re Paul Kramer

11 U.S.C. § 362(h)

No. 04-02900, 2004 WL 3235823, Ch. 7, Dec. 14, 2004

Debtor pro se asserts activity in cases in the U.S. District Court violated the automatic stay. HELD: The United States did not willfully violate the automatic stay. Debtor listed an inaccurate address for the IRS on his matrix and did not comply with local rules regarding notice to the IRS. The United States did not receive notice of the case.

In re Paul Kramer

11 U.S.C. § 362(h)

No. 04-02900, 2004 WL 3235822, Ch. 7, Dec. 13, 2004

Debtor pro se asserts activity in cases in the Iowa District Court violated the automatic stay. HELD: The automatic stay does not apply to the state court proceedings. Neither Debtor nor his bankruptcy estate have any legal or equity interest in the real estate subject to those proceedings.

In re Paul Kramer

11 U.S.C. § 362(b)(1)

No. 04-02900, Ch. 7, Dec. 9, 2004

Debtor pro se asserts a postpetition traffic citation for driving under suspension violated the automatic stay. HELD: This is a criminal proceeding which is excepted from the automatic stay. Issuance of the citation did not violate the stay.

## **V. THE ESTATE, 2491-2760**

### **D. Liens & Transfers; Avoidability, 2571-2600**

Eide v. Lex (In re H & W Motor Express)

11 U.S.C. § 549

No. 02-02017, Adv. 04-9099, 2005 WL 1629798, Ch. 7, June 22, 2005

Trustee seeks to recover payments made to administrative assistant/corporate secretary of Debtor. HELD: The wire transfers were made postpetition. They compensated Defendant for services rendered prepetition, as authorized by the Bankruptcy Code, and are not avoidable.

Schnittjer v. Chelsea Savings Bank (In re Pusteoska)

11 U.S.C. § 544

No. 04-03715, Adv. 05-9012, 2005 WL 856769,

Iowa Code § 321.50(6)

Ch. 7, April 12, 2005

Trustee seeks summary judgment on complaint to avoid lien. HELD: The lien is avoided as it was not timely perfected as required by the version of Iowa Code 321.50 in effect at the time of the transaction.

### **E. Preferences, 2601-2640**

Schnittjer v. First Security State Bank et al (In re Rounds)

11 U.S.C. § 547(b)

No. 05-01142, Adv. 05-9059, 328 B.R. 132, Ch. 7, July 20, 2005

Trustee's complaint seeks to avoid a lien on a vehicle. The parties filed competing motions for summary judgment. HELD: Issues of fact preclude summary judgment. The validity of an assignment of the note and security agreement to an initial lender, whose name was noted on the title, is in dispute.

### **F. Fraudulent Transfers, 2641-2670**

Hanrahan v. Wilson (In re Wilson)

11 U.S.C. § 544(b)(1)

No. 03-00780, Adv. 04-9016, 2004 WL 2671678, Nov. 12, 2004

Trustee seeks to avoid Debtor's transfer of commercial property to his wife by quit claim deed. HELD: Although some badges of fraud are present, Trustee has failed to meet the required elements of a fraudulent transfer.

## **VI. EXEMPTIONS, 2761-2820**

In re Benjamin Stone

11 U.S.C. § 522

No. 05-01547, 329 B.R. 860, Ch. 7, September 6, 2005



Chapter 7 trustee objects to homestead exemption claimed by debtor for residential property located in Wisconsin. HELD: Debtor's domicile for longest portion of 180 days immediately preceding petition date was located in Wisconsin rather than in Iowa. Debtor may claim the \$40,000 homestead exemption available under Wisconsin law.

In re Garold Sadler

No. 05-00857, 327 B.R. 654, Ch. 7, July 29, 2005

Iowa Code § 561.3

Iowa Code § 627.6(11)(b)

Trustee and creditor object to exemption of Debtor's interest in 8,000 bushels of corn. Creditor also objects to exemption of a machine shed on Debtor's homestead property. HELD: The corn is not exempt because Debtor is not feeding livestock. The machine shed is exempt as appurtenant to the farm homestead.

In re Eugene & Mary Jean Schrandt

No. 04-04172, 2005 WL 1629728, Ch. 7, July 11, 2005

Iowa Code § 627.6(8)

Trustee objects to Debtors' exemption of \$5,636 in CRP payments. HELD: The purpose of the CRP payments is conservation of the land. They are not exempt as "public assistance benefits" under sec. 627.6(8)(a).

In re Larry Dean Heeren

No. 04-04127, 324 B.R. 733, Ch. 7, April 11, 2005

11 U.S.C. § 522(f)(1)

Debtor filed motions seeking determination that \$11,000 dissolution award in favor of his former wife did not create a lien on his homestead, or, alternatively, if a judicial lien was created, that it be avoided. HELD: Under Iowa law, the divorce decree did not establish a judicial lien against debtor's homestead in the amount of the \$11,000.00 award. The \$11,000.00 award was sufficiently defined and certain to constitute a judgment. Debtor's homestead, however, is exempt from the automatic attachment of this judgment as a lien.

In re Frances & Mary Takes

No. 04-04020, 2005 WL 579696, Ch. 7, March 8, 2005  
(appealed to U.S. District Court)

Iowa Code § 561.21(1)

The Banks object to Debtors' homestead exemption, asserting their claims predate the acquisition of the property. Debtors assert the acquisition of the condo began with a residency agreement, several years before the Banks' claims arose. HELD: Debtors had a homestead interest in the condo when they first occupied it under the residency agreement, regardless that they did not possess full legal title. A later transaction for warranty deed did not break the homestead right. The homestead right predates the Banks' claims.

## **VII. CLAIMS, 2821-3000**

## **VIII. TRUSTEES, 3001-3020**

## **IX. ADMINISTRATION, 3021-3250**

### **E. Compensation of Officers and Others, 3151-3250**

In re John & Marie McAllister

11 U.S.C. § 330

No. 04-02249, 2005 WL 2205830, Ch. 13, September 6, 2005

Debtors object to application for fees and expenses filed by their former Chapter 13 attorney. HELD: Although Debtors' attitude made the attorney's job more difficult, it appears that the attorney failed to sufficiently communicate with Debtors about the requirements of the Code regarding treatment of secured claims. He also failed to initially comply with Debtors' request that he withdraw as counsel. Finally, the Court notes that counsel's hourly rate for fees exceeds the high end of hourly rates currently being charged by similarly situated bankruptcy attorneys appearing in this court. The Court approves \$5,000 of fees requested of \$7,197.50.

In re Victoria Josephine Delgado, et al

Rule 8002

No. 04-03283 et al, 2005 WL 1378760, Ch. 7, June 8, 2005

Petition preparer, pro se, filed a notice of appeal 28 days after the Court's ruling regarding its activities. U.S. Trustee seeks dismissal of the appeal for untimeliness. HELD: The appeal was not timely filed. If the Notice of Appeal is interpreted as a Motion for extension of time to file the appeal, the failure to meet the appeal deadline was not excusable neglect.

In re Delmar and Betty Gingerich

11 U.S.C. § 330(a)(1)

No. 03-04663, 2005 WL 831807, Ch. 11, April 8, 2005

Former counsel for Chapter 11 Debtors seeks final approval of fees. Debtors object some of the work performed was detrimental to the case and fees are excessive. HELD: The Court concludes the law firm exercised reasonable billing judgment in this case.

In re Victoria J. Delgado et al

11 U.S.C. § 110

No. 04-03283 et al, 2005 WL 758809, Ch. 7, April 1, 2005

Fee disclosure statements failed to disclose bankruptcy petition preparer's information. U.S. Trustee requests the Court examine preparer's fees and the appropriateness of its services. Other issues include the appropriateness of its advertising and whether the preparer's business constitutes the unauthorized practice of law. HELD: The petition preparer has substantially exceeded its proper role and engaged in the unauthorized practice of law. First Amendment freedoms of association and speech do not apply to the conduct in this case. In the future, the petition preparer may not charge more than \$100 in fees.

Advertisements and signs used by the preparer violate § 110(f). The preparer is enjoined from providing any bankruptcy services other than typing petitions.

In re On-Line Services, Ltd. LLC

11 U.S.C. § 330(a)

No. 03-04806, 2004 WL 2671669, Ch. 7, Oct. 28, 2004

aff'd in part, rev'd in part, remanded, 324 B.R. 342 (B.A.P. 8th Cir. 2005)

U.S. Trustee seeks examination of compensation paid to Debtor's counsel, questioning payment from Debtor's retainer and the source of the retainer. HELD: The retainer was property of the bankruptcy estate. Counsel is not entitled to payment from the estate. The court awards \$1,946.77 for reasonable prepetition services.

## **X. DISCHARGE, 3251-3440**

### **C. Debts and Liabilities Discharged, 3341-3410**

In re Daniel Weilein and Sandra LaFave

11 U.S.C. § 523(a)(19)

No. 04-00667, 328 B.R. 553, Ch. 7, August 1, 2005

Chapter 7 debtor sought to hold creditor in contempt for allegedly violating discharge injunction, and creditor asserted that debts in question were excepted from discharge. The Court found the debts were not excepted from discharge. After new legislation was enacted, creditor moved for reconsideration. HELD: Debtor's obligations on securities fraud claims did not have to be reduced to judgment, order or settlement prior to commencement of debtor's bankruptcy case in order for such obligations to be excepted from discharge under the special securities-fraud nondischargeability provision, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Cumberworth v. U.S. Dep't of Education (In re Cumberworth)

11 U.S.C. § 523(a)(8)

No. 02-03946, Adv. 03-9020, 2005 WL 1387981, Ch. 7, June 8, 2005

(appealed to B.A.P.)

Debtor seeks to discharge student loan debt for undue hardship. The U.S. argues Debtor can repay under an income contingent repayment plan without undue hardship. HELD: Debtor and her husband are both disabled and receiving disability or pension income. Debtor's husband's income from the VA is being administered by a fiduciary for the VA. Debtor's income is insufficient to pay student loans and excepting the debt from discharge would cause her and her husband undue hardship.

Dunn v. United States (In re Dunn)

11 U.S.C. § 523(a)(8)

No. 04-01699, Adv. 04-9129, 325 B.R. 807, Ch. 7, May 31, 2005

Debtor filed complaint for determination that her obligation to repay sums that she received from federal government toward her college education in exchange for entering into reserve officer training corps

(ROTC) was not student loan debt, within meaning of nondischargeability provision of the Bankruptcy Code, or that debtor was entitled to "undue hardship" discharge. HELD: On motion to dismiss filed by the U.S., the Court held that debt was absolutely nondischargeable, regardless of whether repayment would impose "undue hardship" on debtor, under separate federal statute precluding discharge of such debts until five years had passed since last day on which debtor had agreed to provide military service.

Whitmarsh v. Whitmarsh (In re Whitmarsh)

11 U.S.C. § 523(a)(5)

No. 04-02716, Adv. 04-9174, 2005 WL 1320146, Ch. 7, May 31, 2005

Plaintiff seeks summary judgment that dissolution debts constitute support and are nondischargeable under § 523(a)(5). HELD: This determination is made in light of all the facts and circumstances relevant to the intention of the parties. On the record presented, Plaintiff has failed to meet the initial burden to prove the debt is for alimony, maintenance or support.

Heeren v. Heeren (In re Heeren)

Rule 4007(c)

No. 04-04127, Adv. 05-9040, 2005 WL 1200995, Ch. 7, May 16, 2005

Debtor asserts Plaintiff's dischargeability complaint was not timely filed. Plaintiff argues she timely filed her complaint prior to the deferred date of discharge. HELD: Although the discharge was deferred on motion of the Trustee, the deadline for filing Plaintiff's § 523(a)(15) complaint was not extended. The complaint was untimely filed and must be dismissed.

Savoy v. Balm (In re Balm)

11 U.S.C. § 523(a)(15)

No. 04-00055, Adv. 04-9060, 2005 WL 1126844, Ch. 7, May 10, 2005

Plaintiff seeks to except from discharge a dissolution debt for mortgage arrearages. HELD: This is non-support dissolution debt. Debtor has failed to prove either of the exceptions under § 523(a)(15)(A) or (B). Debtor has sufficient income to cover his expenses and pay the debt and his standard of living is equal to or superior to that of Plaintiff. The debt is excepted from discharge.

Wallander v. Wallander (In re Wallander)

11 U.S.C. § 523(a)(2)(B)

No. 04-01064, Adv. 04-9112, 324 B.R. 746, Ch. 7, May 5, 2005

§ 523(a)(15)

Chapter 7 debtor's former wife filed adversary complaint, seeking determination that a \$12,000 loan consolidation debt jointly owed by debtor was excepted from discharge. HELD: Debtor's obligation did not fall within the discharge exception for false financial statements. Debtor has failed to prove either of the exceptions under § 523(a)(15)(A) or (B). He has the ability to pay the debt and his standard of living is equal to or superior to Plaintiff's. The debt is excepted from discharge.

Land O'Lakes Farmland Feed LLC v. Gehl (In re Gehl)

11 U.S.C. § 523(a)(2)

No. 04-00102, Adv. 04-9063, 325 B.R. 269, Ch. 7, April 11, 2005

§ 523(a)(6)

§ 727(a)(4)

Creditor seeks to except claim from discharge or bar Debtor's discharge for fraud. The claim arose from Debtor's failure to pay for shipments of weaner pigs which he believed were substandard. HELD: Debtor had the intent to pay for the pigs at the time they were "ordered," that is, when the parties executed their agreement. Even if the Court were to accept creditor's contractual interpretation that Debtor incurred a new obligation for pigs every month under the agreement, creditor failed to prove a subjective intent to defraud on the part of Debtor. Debtor's actions were neither willful nor malicious. Creditor failed to establish that Debtor's valuation of assets on his bankruptcy schedules was fraudulent.

Schulstadt v. U.S. Dep't of Education (In re Schulstadt) 11 U.S.C. § 523(a)(8)  
No. 04-2128, Adv. 04-9082, 322 B.R. 863, Ch. 7, April 6, 2005

Pro se Chapter 7 debtor filed adversary complaint, seeking discharge of his student loan debt. HELD: Despite his wife's serious illness and loss of employment, debtor failed to establish that excepting his student loan obligations from discharge would impose an "undue hardship" on him.

Dunkerton Cooperative Elevator v. Bakker (In re Bakker) Rule 7004  
No. 04-01036, Adv. 04-9098, 2005 WL 579702, Ch. 7, Feb. 7, 2005

Debtors assert the complaint seeking exception from discharge was not timely served on them and should be dismissed. HELD: Dismissal is not warranted. Debtors had actual notice of the proceeding by email and there is no showing of prejudice from the delay in service.

Stone v. Wade (In re Wade) 11 U.S.C. § 523(a)(2)  
No. 03-01568, Adv. 03-9163, 2004 WL 3019461, Ch. 7, Dec. 29, 2004

Plaintiffs assert damages resulting from Debtors' construction work on their home are excepted from discharge for fraud, defalcation in a fiduciary relationship and willful injury. HELD: Plaintiffs failed to prove Debtors knowingly made false representations regarding the quality of the construction. No fiduciary relationship existed between the parties. There is no evidence Debtors intentionally or deliberately meant to harm Plaintiffs. The claim is not excepted from discharge.

In re Daniel Weilein & Sandra LaFave 11 U.S.C. § 523(a)(19)  
No. 04-00557, 319 B.R. 175, Ch. 7, Dec. 29, 2004  
appeal dismissed 3/2/05; motion to reconsider granted 7/30/05

Chapter 7 debtor seeks to hold creditor in contempt for violating discharge injunction. Creditor asserts that debts in question are excepted from discharge. HELD: Debtor's obligations on securities fraud claims that were pending against him in state court on date his bankruptcy petition was filed were not excepted from discharge under special securities-fraud nondischargeability provision, where claims had not been reduced to judgment, order or settlement prior to debtor's bankruptcy filing.

Smith v. Wheeler (In re Wheeler)

11 U.S.C. § 523(a)(2)

No. 03-00435, Adv. 03-9157, 317 B.R. 783, Ch. 7, Nov. 22, 2004

Trucker injured while driving for Chapter 7 debtors' trucking business, to whom debtors had been held liable by state court for failing to provide workers' compensation insurance, brought adversary proceeding to except judgment debt from discharge. HELD: The lack of any posted written statement on premises of trucking business, indicating that Debtors did not have workers' compensation insurance in place for drivers, was insufficient to permit driver injured while driving truck for Debtors' business to assert nondischargeability claim under "false financial statement" dischargeability exception. Debtors did not stand in "fiduciary capacity" to trucker, of kind required by fraud-based dischargeability exception. Debt would not be excepted from discharge as one for Debtors' false pretenses, false representation or actual fraud.

Hootman v. United States (In re Hootman)

11 U.S.C. § 523(a)(8)

No. 01-01088, Adv. 03-9011, 2004 WL 2418315, Oct. 25, 2004

Debtor seeks a determination that his student loans should be discharged for undue hardship. HELD: Debtor has not presented sufficient evidence to satisfy the high standards to establish undue hardship.

## **XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460**

## **XII. BROKER LIQUIDATION, 3461-3480**

## **XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500**

## **XIV. REORGANIZATION, 3501-3660**

### **B. The Plan, 3531-3590**

In re Gilbertson Restaurants, LLC et al

No. 04-00385 et al, 2005 WL 783063, Ch. 11, April 4, 2005

Debtor Beaton, Inc. seeks confirmation of its Third Amended and Restated Plan of Reorganization. FL Trust's objections raise issues of bad faith, feasibility and improper substantive consolidation. HELD: Debtor proposed its Plan in good faith. The Plan is workable and offers a reasonable prospect of success. The Plan does not violate the principals of law regarding substantive consolidation of cases. The Plan is confirmed.

## **XV. ARRANGEMENTS, 3661.100-3661.999**

## **XVI. COMPOSITIONS, 3662.100-3670**

## **XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700**

## **XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740**

In re Robert & Patricia Harken

11 U.S.C. § 1325(a)(5)

No. 04-02914, 2004 WL 3019467, Ch. 13, Nov. 29, 2004

Creditor objects to confirmation of plan, asserting its secured claim is undervalued. HELD: NADA value is accepted as the value of the vehicle. The appropriate interest rate including risk adjustment is 8%.

## **XIX. REVIEW, 3741-3860**

### **B. Review of Bankruptcy Court, 3761-3810**

Land O'Lakes Farmland Feed LLC v. Gehl (In re Gehl)

Rule 8002(c)(2)

No. 04-00102, Adv. 04-9063, 324 B.R. 756, Ch. 7, May 20, 2005

Nondischargeability complainant moved for extension of deadline to appeal judgment entered against it. HELD: Creditor failed to demonstrate that its delay in filing a notice of appeal was caused by excusable neglect. Counsel should have been aware of the abbreviated deadline to appeal Bankruptcy Court orders and should have had a system in place to apprise him of entry of the ruling while he was out of the office.

## **XX. OFFENSES, 3861-3863**